## REMARKS

The claims remaining in the present application are Claims 1-22. The Examiner is thanked for performing a thorough search. Claims 1, 3, 8, 11, 16-19, 21, and 22 have been amended. No new matter has been added. For example support for the amendments to independent Claims 1, 8 and 16 can be found among other places in the last paragraph of page 11 of the instant application 10/632,189, which states,

> In one embodiment, the candidate variables are partitioned into categories and the candidate variables are reordered within their respective categories. For example, assume that "a", "l", "x" are small read-only variables, "b", "m", "y" are large read-only variables. The small read-only variables "a", "l", "x" may be analyzed and reordered separately from variables "b", "m", "y". Assuming that the small read-only variables "a", "l", "x" are reordered as "l", "a", "x" and the large read-only variables are reordered as y, m, b, the potential layout may be "l", "a", "x", "y", "m", "b".

## CLAIM REJECTIONS

### 35 U.S.C. §101

Claim 8

In paragraph 2, the Office Action rejected Claim 8 under 35 U.S.C. §101. Claim 8 has been amended to recite structure "reordering categorized candidate variable linker" and "reordering categorized candidate variable component" that distinguishes Claim 8 from the prior art. Therefore, Applicants believe that this rejection has been overcome.

However, Applicants also wish to point out that Claim 8 is not limited to software and that software is statutory subject matter. First, specifically concerning the Office Action's statement that software is not statutory. In the 1970s, the USPTO avoided granting patents on inventions relating to software. In 1981 the Supreme Court forced the PTO to change its position in the Diamond v. Diehr case. Another landmark case that clarified the patentability of computer software is State Street Bank & Trust v. Signature Financial Group issued by the Federal Circuit. MPEP 2106 provides the PTO's guidelines for determining the patentability of computer software. Clearly, the PTO would not provide guidelines for determining the patentability of computer software if computer software was not statutory subject

matter. Applicant respectfully submits that Claim 8 should be evaluated by their limitations not by what those claims incidentally cover.

Second, anyone of ordinary skill in the art would know that a computer system as recited by Claim 8 could be implemented using hardware, software, firmware, or a combination thereof. Further, there are numerous examples in the specification of various parts of system embodiments including hardware, software, etc... Therefore, the computer system of Claim 8 is not limited to software but reads on hardware, software, firmware or a combination thereof.

35 U.S.C. §102

Claims 1, 2, 6 and 20

Claims 1, 2, 6, and 20 are rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Patent Publication No. 20020108078 by Yui et al. (referred to hereinafter as "Yui"). Applicants respectfully submit that embodiments of the present invention are neither taught nor suggested by Yui.

Amended independent Claim 1 recites,

> A method for automatically reordering variables, the method comprising:
> as a part of compilation,
> identifying a set of variables that are candidates for reordering, wherein the candidate variables are associated with one or more source code files that are being compiled;
> collecting data for determining a potential layout for the candidate variables;
> as a part of linking,
> determining the potential layout based, at least in part, on the data, wherein the data is used to partition the candidate variables into categories and enables reordering the candidate variables within their respective categories; and
> reordering the variables based, at least in part, on the potential layout.

Applicants respectfully submit that Yui does not teach or suggest, among other things, "wherein the data is used to partition the candidate variables into categories

and enables reordering the candidate variables within their respective categories," as recited by Claim 1.

Yui teaches a way of not wasting space. As a part of this, variables are divided into groups. The variables are allocated virtual memory in the order that they appear in their groups. For example, referring to Col. 5 lines 37-38 Yui states, "variables are allocated sequentially from the top of each group to which each of the variables belongs" (emphasis added).

Therefore, Claim 1 should be patentable over Yui for at least the reason that Claim 1 recites "wherein the data is used to partition the candidate variables into categories and enables reordering the candidate variables within their respective categories." Independent Claims 8 and 16 should be patentable for similar reasons that Claim 1 should be patentable.

Claims 6 and 7 depend on Claim 1. Claims 9, 14, and 15 depend on Claim 8. Claims 21-22 depend on Claim 16. These dependent claims include all of the limitations of their respective independent claims. Further, these dependent claims include additional limitations which further make them patentable. Therefore, these dependent claims should be patentable for at least the reasons that their respective independent claims should be patentable.

35 U.S.C. §103

Claims 2-5, 10-13 and 17-20

Claims 2-5, 10-13 and 17-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Yui in view of U.S. Patent No. 5,940,621 by Caldwell (referred to hereinafter as "Caldwell"). Applicants respectfully submit that embodiments of the present invention are neither taught nor suggested by Yui or Caldwell, alone or in combination.

As already stated, Claims 1, 8 and 16 are patentable over Yui because Yui fails to teach or suggest "wherein the data is used to partition the candidate

variables into categories and enables reordering the candidate variables within their respective categories," as recited by independent Claims 1, 8 and 16.

Caldwell does not remedy the deficiency in Yui in that Caldwell does not teach, among other things, "wherein the data is used to partition the candidate variables into categories and enables reordering the candidate variables within their respective categories," as recited by Claim 1. In fact, the Office Action does not even assert that Caldwell teaches the limitations recited by independent Claims 1, 8 and 16.

Claims 2-5 depend on Claim 1. Claims 10-13 depend on Claim 8. Claims 17-20 depend on Claim 16. These dependent claims include all of the limitations of their respective independent claims. Further, these dependent claims include additional limitations which further make them patentable. Therefore, these dependent claims should be patentable for at least the reasons that their respective independent claims should be patentable.

## CONCLUSION

In light of the above listed amendments and remarks, reconsideration of the rejected claims is requested. Based on the arguments and amendments presented above, it is respectfully submitted that Claims 1-22 overcome the rejections of record. For reasons discussed herein, Applicant respectfully requests that Claims 1-22 be considered be the Examiner. Therefore, allowance of Claims 1-22 is respectfully solicited.

Should the Examiner have a question regarding the instant amendment and response, the Applicant invites the Examiner to contact the Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,
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